

### **REMARKS**

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested. Claim 21 has been amended without prejudice or disclaimer.

Applicants thank the Examiner for the detailed response to arguments on pages 2-3 of the Office Action. Inasmuch as we are after final, Applicants shall provide an explanation as to why one of skill in the art would not have sufficient motivation or suggestion to combine these references.

Applicants respect this initial matter that in the previous amendment Applicants provided numerous arguments with regards to the suggestive power of each of the references and why there was a preponderance of the evidence in Applicants' favor that one of skill in the art would not have sufficient motivation or suggestion to combine the references. As part of that argument, Applicants explained why they believed that the references were non-analogous to each other and to the present invention. Applicants respectfully submit that there are several steps involved in successfully establishing a prima facie case that it would be obvious that one of skill in the art to combine the references. First, as a preliminary matter, the references must be analogous. Then, if they are analogous, there must be sufficient motivation or suggestion to combine these references or the Office must still identify a reason that would have prompted a person of ordinary skill in the art to combine the elements as a new invention does. Applicants respectfully submit that the only response provided in the response to our arguments has been to address the non-analogous argument, but avoid the substantive argument with regards to suggestion or motivation. Therefore, in this regard, we would request a more full consideration of the present remarks as well as another opportunity to respond if the Patent Office has further comments on this issue. Otherwise, Applicants respectfully submit that it would be inappropriate to send an Advisory Action continuing to reject the claims where the primary

substance of our arguments in the previous Office Action have simply not been addressed in the response.

Applicants now turn to the substance of the issue. First, with regards to whether Devine et al. and Mital et al. are analogous to each other or to the present invention. Page 3 of the Office Action asserts that both Applicants' invention and Devine et al. and Mital et al. are basically directed to schematically representing full charge of a process and generating computer executable code from these flowcharts. Applicants respectfully dispute this characterization of the references. Primarily, this is because Mital et al. fail to teach such an approach. The abstract of Mital et al. easily illustrates the point. Here, the abstract explains that their invention is a graphical user interface (GUI) scheduler program that is provided for modeling business flow processes. The GUI scheduler program includes tools to allow a user to create a schedule for business flow processes based on a set of rules defined by the GUI scheduler program. The program provides tools that allow a user to define a binding between the schedule and various components such as COM components, script components, message cues and other workflow schedules. The scheduler program allows a user to define actions and group actions into transactions using the simple GUI scheduling tools. Applicants respectfully submit that it is not the business process that is converted into executable code but it is the schedule that can be converted into executable code in various forms such as XML, C, C+ and C++.

Figure 1 of Mital et al. illustrates this point. Here, the business workflow process itself is feature 24. Figure 2 shows that pane 20' is the location within the GUI in which a business process 24' may be inserted. Figure 3 illustrates the example components in a business process that may be inserted into that pane. However, the GUI scheduler 10' in Figure 2 clearly only uses the business workflow process as part of generating a schedule that uses many other components that are not part of the business flow process. Column 2, lines 29-46 explain again

that the scheduler program allows the user to define actions and groups of actions into transactions using the GUI scheduling tools and then it is the schedule itself that is converted into the executable code. Applicants' basic point is that the Office Action casts the teachings of Mital et al. as being able to essentially take any generic process, as one that can be generated from Microsoft's Visio application, and simply generate computer executable code from such a process. Therefore, Applicants submit that the technology is not as simply characterized as is done in the response. Applicants' arguments therefore that Mital et al. is non-analogous to the present invention or to Devine et al. continue to stand.

Applicants' next turn to the Devine et al. reference. Here, the Office Action asserts that because Devine et al. states "the system and method described herein may be employed in many applications besides telephony services, including gaming, video-conferencing, billing, and other applications", [0067], thus appearing to teach that their approach may be applied to anything. Applicants respectfully submit that our basic argument is still valid. For example, this is easily shown when paragraph [0067] is placed in the appropriate context which includes paragraph [0065]. This paragraph explains the pseudo code of the machine state engine 22 shown in Figure 1. Here, this shows the call management service system (CMSS) 10 with an estate event table 24, state machine engine 22 and a call processing engine 20. Other features are taught as well. Clearly, this figure illustrates a call management service system. Now, paragraph [0065] explains that the state machine engine 22 employs the contents of the state event table 24 as well as the message information to the system from one state to the next. As such, the system:

"which may be example a telephony switch, a video on demand system, a gaming system or other application becomes a state table driven system. Therefore, upgrading the system is achieved by changing the contents of the state event table 24. This makes upgrading a process or service quick and efficient as changes may be made at the state event table 24 and the underlying telephony system does not need to [be] changed or altered."

Therefore, Applicants respectfully submit that it is clear from the teachings of the reference that they do not broaden the application beyond an underlining telephony system. What is taught in paragraphs [0065] and [0067] is that the state event table 24 may be changed in its contents to provide over a telephony system, a video on demand system or a gaming system or a video conferencing system or a billing system and so one. However, Figure 1 while the state event table 24 may have its contents that may change, the other aspects of Figure 1, whether the system is used for gaming, video conferencing and so forth, remains the same. It is still underlined by a telephony system. Therefore, Applicants respectfully submit that Devine et al. remains non-analogous to the spoken dialog system of the present invention and the teachings of Devine et al. are not as expansive and as broadening as would be led to believe by reading paragraph [0067] in isolation.

Applicants also note that the Office Action stresses the point by noting that our invention and Devine et al. both disclose using the same software program, Microsoft's Visio, in order to draw the flowcharts. Applicants respectfully traverse this analysis and note that this is actually quite a flimsy argument. It is almost akin to asserting that because two patent applications were written using Microsoft Word, that somehow the substance of those applications is analogous because they both use Word. Microsoft's Visio is a generic graphical program that can be used to generate any number of graphical features which include drawing flowcharts. Applicants therefore respectfully submit that the fact that we mention that one may use the Visio application to generate flowcharts as well as the Devine et al. reference really carries essentially no weight in terms of whether the substance and meaning of the flowcharts are analogous. Therefore, Applicants submit that this issue has been answered.

In sum, Applicants respectfully submit that the substance of our previous arguments in detail has been reaffirmed and each point raised in response has been addressed in such a manner

as to explain why our arguments still carry their original force. Applicants further note that the only thing addressed in the response relates to whether the references were analogous or not. Applicants maintain that they are not analogous and furthermore that even if they were analogous the second hurdle of addressing whether it would be obvious of one of skill in the art to combine these references has not been fully analyzed. Therefore, as the record now stands, Applicants have provided substantive evidence in their favor that has yet to be addressed. Accordingly, Applicants respectfully submit that a reevaluation of our arguments will confirm that the preponderance of the evidence is in the favor of patentability.

**Rejection of Claims 21-32 Under 35 U.S.C. §101**

The Office Action rejects claims 21-32 under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicants have amended claims 8, 9, 13 and 14 to address the Section 101 rejection. Applicants have added the limitation of a processor. Therefore, this claim cannot be interpreted as software per se. Furthermore, the various means have been amended to recite means for controlling the processor to perform certain functionality. Therefore, Applicants respectfully request withdrawal of the Section 101 rejection.

**Rejection of Claims 1, 7-8, 11-12, 21, 27-28 and 31-32 Under 35 U.S.C. §102(e)**

The Office Action rejects claims 1, 7-8, 11-12, 21, 27-28 and 31-32 under 35 U.S.C. §102(e) as being anticipated by Devine et al. (U.S. Publication No. 2003/0217190) ("Devine et al."). Applicants respectfully traverse this rejection and traverse the citation that it would be obvious to one of skill in the art to have a flowchart for a spoken dialog service or any other process that can be represented by a flowchart because Devine et al. states that "the systems and method described herein may be employed in many applications besides telephony services, including gaming, video conferencing, billing in other application." The reliance on common knowledge or well-known prior art is governed by MPEP 2144.03. Here, the MPEP requires that

the taking of official notice or common knowledge should be “judicially applied.” Here, when the Office takes “official notice” that is unsupported by documentary evidence should only be done where the “facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” Applicants note that the type of information that is properly found to be taken under judicial notice is technologies such as governing the intensity of a flame in accordance with a heat requirement as in the Ahlert case. Here, we are certainly not the area of such simple technology.

This section also notes in MPEP 2144.03, Section A also states that “it would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well-known are not capable of instant and unquestionable demonstration as being well-known.” (Emphasis added.) For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation of some reference work recognized as standard in the pertinent art. Furthermore, it is never appropriate to rely solely on “common knowledge” in the art without evidentiary support in the record, as the principle evidence upon a rejection is based. Applicants respectfully traverse the essential taking of official notice that it would be obvious of one of ordinary skill in the art for a spoken dialog service to be used based on the teachings of Devine et al.

As has been eluded to above, while paragraph [0067] of Devine et al. does state that the systems and method described may be employed in many applications beside telephony services and so forth, the teachings of [0065] highlight that it is not as easy as it sounds. Here, they explain the state machine 22 which employs the contents of the state event table 24 as well as the message information to the system from one state to the next. As such, they explain, the system, which may be a telephony switch, a video on demand, a gaming system or other application

becomes a state table driven system. They explain that upgrading the system is achieved by changing the contents of the state event table 24. This makes upgrading a process or service quick and efficient as changing may be made at the state event table 24 and the underlying telephony system does not need to be changed or altered. The question is, of course, is it “capable of instant and unquestionable demonstration as being well-known” that a spoken dialog service can be implemented via a state event table 24? Applicants would respectfully submit that this is not an easy question to answer. Certainly not when compared to the age old technology of adjusting the intensity of a flame.

Thus, Applicants respectfully submit that first, the analysis on page 5 of the Office Action is inappropriate with regards to utilizing a common knowledge or official notice approach in the obviousness analysis and second, Applicants submit that it is certainly not unquestionably undemonstratable that a spoken dialog process can easily be simply inserted into the teachings of Devine et al. This is because the systems and methods that may be utilized besides telephony have to be the type that can function in the context of the state event table 24. Applicants submit that it would not be obvious to one of skill in the art to think of a spoken dialog service as that type of service. Therefore, Applicants respectfully submit that claim 1 is patentable and in condition for allowance. Claims 7-8 and 11-12 each depend from claim 1 and recite further limitations therefrom.

Claims 21 , 27-28 and 31-32 are patentable and in condition for allowance for the same reasons set forth above relative to claim 1.

**Rejection of Claims 2- 3, 5, 22-23 and 25 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 1, 3, 5, 22-23 and 25 under 35 U.S.C. §103(a) as being unpatentable over Devine et al. (U.S. Publication No. 2003/0217190) (“Devine et al.”) in view of Mital et al. (U.S. Patent No. 7,184,967) (“Mital et al.”). Applicants incorporate the arguments.

set forth above and respectfully submit that one of skill in the art would not have sufficient motivation or suggestion to combine Devine et al. with Mital et al. to reject the claims.

Therefore, Applicants maintain that these claims are patentable and in condition for allowance.

**Rejection of Claims 4, 6, 9-10, 24, 26 and 29-30 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 4, 6, 9-10, 24, 26 and 29-30 under 35 U.S.C. §103(a) as being unpatentable over Devine et al. in view of Mital et al. and in further view of Wallace (U.S. Patent No. 4,686,623) ("Wallace"). Applicants respectfully submit, as set forth above, that these references should not be combined and that the claims are patentable and in condition for allowance. Applicants further do not acquiesce it would be obvious of one of skill in the art to combine Wallace with the other references. However, at this time, Applicants believe that the weightier arguments are in their favor and that this application will be allowed.



**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

By: 

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